

Christopher B. Ghio (State Bar No. 259094)
Christopher Celentino (State Bar No. 131688)
Yosina M. Lissebeck (State Bar No. 201654)

DINSMORE & SHOHL LLP

655 West Broadway, Suite 800
San Diego, CA 92101

Telephone: 619.400.0500
Facsimile: 619.400.0501

christopher.ghio@dinsmore.com
christopher.celentino@dinsmore.com
yosina.lissebeck@dinsmore.com

Special Counsel to Richard A. Marshack, Chapter 11 Trustee

Tyler Powell (Ky. Bar No. 90520 – Admitted pro hac vice)
Dinsmore & Shohl LLP

100 West Main Street, Suite 900
Lexington, KY 40507

Telephone: 859-425-1056
Facsimile: 859-425-1099

tyler.powell@dinsmore.com

Special Counsel to Richard A. Marshack, Chapter 11 Trustee

In Association With,

D. EDWARD HAYS, #162507

ehays@marshackhays.com

CHAD V. HAES, #2767221

chaes@marshackhays.com

MARSHACK HAYS WOOD LLP

870 Roosevelt

Irvine, California 92620

Telephone: (949) 333-7777

Facsimile: (949) 333-7778

General Counsel for Chapter 11 Trustee,
Richard A. Marshack

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**

In re:

THE LITIGATION PRACTICE GROUP P.C.,

Debtor.

Case No.: 8:23-bk-10571-SC

Adv. Proc. No. 8:23-ap-XXXX-SC

Chapter 11

RICHARD A. MARSHACK,
Chapter 11 Trustee,

Plaintiff,

v.

BRIDGE FUNDING CAP, LLC D/B/A
FUNDURA CAPITAL; MNS FUNDING, LLC;
AZZURE CAPITAL, LLC; MARICH BEIN,
LLC; DIVERSE CAPITAL, LLC; PECC CORP.;
PROOFPOSITIVE, LLC; MC DVI FUND 1,
LLC; MC DVI FUND 2, LLC; DEBT
VALIDATION FUND II, LLC; VENTURE
PARTNERS, LLC;

Defendants.

TRUSTEE'S COMPLAINT FOR:

(1) DECLARATORY JUDGMENT AS TO THE VALIDITY OF THE SECURITY INTEREST OF DEFENDANT BRIDGE FUNDING CAP LLC.

(2) DECLARATORY JUDGMENT AS TO THE VALIDITY OF THE SECURITY INTEREST OF DEFENDANT MNS FUNDING, LLC.

(3) DECLARATORY JUDGMENT AS TO THE VALIDITY OF THE SECURITY INTEREST OF DEFENDANT AZZURE CAPITAL, LLC

(4) AVOIDANCE, RECOVERY, AND PRESERVATION OF FRAUDULENT TRANSFER AS TO DIVERSE CAPITAL, LLC.

(5) AVOIDANCE, RECOVERY, AND PRESERVATION OF PREFERENTIAL TRANSFERS MADE WITHIN NINETY DAYS OF THE PETITION DATE AS TO PROOFPOSITIVE, LLC, MC DVI FUND 1, LLC, MC DVI FUND 2, LLC, AND DEBT VALIDATION FUND II, LLC, AND VENTURE PARTNERS, LLC.

(6) AVOIDANCE, RECOVERY, AND PRESERVATION OF FRAUDULENT TRANSFERS AS TO BRIDGE FUNDING CAP, LLC; AZZURE CAPITAL, LLC; AND MNS FUNDING, LLC.

(7) DECLARATORY JUDGMENT AS TO ALL DEFENDANTS (I) TO DETERMINE THE NATURE, EXTENT, AND PRIORITY OF VALID AND PERFECTED SECURITY INTERESTS AGAINST THE DEBTOR INCLUDING THOSE SECURITY INTERESTS THAT ARE VALID BUT HAVE BEEN AVOIDED AND PRESERVED FOR THE BENEFIT OF THE ESTATE AND (II) TO DETERMINE THE SECURED AND UNSECURED AMOUNTS OF THE DEFENDANTS' CLAIMS IF NOT OTHERWISE DETERMINED HEREIN.

AND

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**(8) SUBORDINATION OF PROOF OF
CLAIM OF BRIDGE FUNDING CAP,
LLC**

For his *Complaint for (1)Declaratory Judgment as to the Validity of the Security Interest of Defendant Bridge Funding Cap LLC; (2) Declaratory Judgment as to the Validity of the Security Interest of Defendant MNS Funding, LLC; (3) Declaratory Judgment as to the Validity of the Security Interest of Defendant Assure Capital, LLC; (4)Avoidance, Recovery, and Preservation of Fraudulent Transfer as to Diverse Capital, LLC; (5) Avoidance, Recovery, and Preservation of Preferential Transfers made within Ninety-days of the Petition Date as to ProofPositive, LLC, MC DVI Fund I, LLC, MC DVI Fund 2, LLC, and Debt Validation Fund II, LLC, and Venture Partners, LLC; (6) Avoidance, Recovery, and Preservation of Fraudulent Transfers as to Bridge Funding Cap, LLC; Azzure Capital, LLC; and MNS Funding, LLC; (7) Declaratory Judgment As To All Defendants (I) To Determine The Nature, Extent, and Priority Of Valid And Perfected Security Interests Against The Debtor Including Those Security Interests That Are Valid But Have Been Avoided And Preserved For The Benefit Of The Estate And (II) To Determine The Secured And Unsecured Amounts Of The Defendants' Claims If Not Otherwise Determined Herein and (8)Subordination of Proof of Claim of Bridge Funding Cap, LLC* (the "Complaint"), Plaintiff Richard A. Marshack, the Chapter 11 Trustee (the "Trustee" or "Plaintiff") for the bankruptcy estate (the "Estate") of debtor The Litigation Practice Group P.C. (the "Debtor" or "LPG") in the above-captioned bankruptcy case (the "Bankruptcy Case"), alleges and avers as follows:

STATEMENT OF JURISDICTION, NATURE OF PROCEEDING, AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B), (E), (F), (H), (K) and (O), 1334(b), and General Order No. 13-05 of the District Court for the Central District of California because this is a core proceeding arising in and/or related to the Bankruptcy Case, which is a case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), and which is pending in the United States Bankruptcy Court for the Central District of California, Santa Ana Division (the "Court"). Regardless of whether this proceeding is core, non-core, or otherwise, the Plaintiff consents to the entry of a final order and judgment by the Bankruptcy Court. Defendants are hereby notified that Rule 7008 of the Federal Rules of Bankruptcy Procedure requires them to plead whether consent is given to the entry of a final order and judgment by the bankruptcy court. Venue of this adversary proceeding properly lies in this

1 judicial district pursuant to 28 U.S.C. § 1409(a) because this proceeding is related to the Debtor's
2 pending Bankruptcy Case.

3 **THE PARTIES**

4 2. Debtor LPG is, and at all material times was, a professional corporation organized,
5 existing, and in good standing under the laws of the State of California, with its principal place of
6 business in Tustin, California.

7 3. Defendant Bridge Funding Cap, LLC D/B/A/ Fundura Capital is, and at all material
8 times represented that it was, a New York – Domestic Limited Liability Company, (“Bridge”).

9 4. Defendant Bridge may be served by first class mail postage prepaid upon an officer or
10 managing partner: Bridge Funding Cap LLC; 538 13th Avenue, Suite 324; Brooklyn, New York
11 11219.

12 5. Defendant MNS Funding, LLC is, and at all material times represented that it was, a
13 New York – Domestic Limited Liability Company, (“MNS”).

14 6. Defendant MNS may be served by first class mail postage prepaid upon its registered
15 Agent: File Right LLC; 5314 16th Avenue, Suite 139; Brooklyn, New York 11204.

16 7. Defendant Azzure Capital, LLC is, and at all material times represented that it was, a
17 New York – Domestic Limited Liability Company, (“Azzure”).

18 8. Defendant Azzure may be served by first class mail postage prepaid upon its registered
19 agent: The LLC; 1820 Avenue M, Suite #695; Brooklyn, New York 11230.

20 9. Defendant, Marich Bein, LLC, and at all material times represented that it was, a New
21 York – Domestic Limited Liability Company (“Marich”).

22 10. Defendant Marich may be served by first class mail postage prepaid upon its registered
23 agent: The LLC, 99 Wall Street, Number 2669, New York, NY 10005.

24 11. Defendant Diverse Capital, LLC, and at all material times represented that it was, a
25 Connecticut – Domestic Limited Liability Company, (“Diverse”).

26 12. Defendant Diverse may be served by first class mail postage prepaid upon its
27 registered agent: Registered Agent Solutions, Inc.; 2138 Silas Deane Hwy, Ste 101; Rocky Hill,
28 Connecticut 06067.

1 13. Defendant PECC Corp, and at all material times represented that it was, a Delaware-
2 Corporation, (“PECC”).

3 14. Defendant PECC may be served by first class mail postage prepaid upon its registered
4 agent: Registered Agent Solutions, Inc.; 838 Walker Road Suite 21-2; Dover, Delaware 19904.

5 15. Defendant ProofPositive, LLC, and at all material times represented that it was, a
6 Wyoming- Limited Liability Company, (“ProofPositive”).

7 16. Defendant ProofPositive may be served by first class mail postage prepaid upon its
8 registered agent: Registered Agents, Inc.; 30 N Gould St, Ste R; Sheridan, Wyoming 82801.

9 17. Defendant MC DVI Fund 1, LLC; and at all material times represented that it was, a
10 Wyoming- Limited Liability Company- Corporation, (“MCDVI 1”).

11 18. Defendant MCDVI 1 may be served by first class mail postage prepaid upon its
12 registered agent: Corporate Direct, Inc.; 300 N Center Street, Unit 6; Casper, Wyoming 82601.

13 19. Defendant MC DVI Fund 2 LLC, and at all material times represented that it was, a
14 Wyoming- Limited Liability Company- Corporation, (“MCDVI 2”).

15 20. Defendant MCDVI 2 may be served by first class mail postage prepaid upon its
16 registered agent: Corporate Direct, Inc.; 300 N Center Street, Unit 6; Casper, Wyoming 82601.

17 21. Defendant Debt Validation Fund II, LLC, and at all material times represented that it
18 was, a Wyoming- Limited Liability Company- Corporation, (“DVF”).

19 22. Defendant DVF may be served by first class mail postage prepaid upon its registered
20 agent: Cloud Peak Law, LLC; 1095 Sugar View Dr., Ste 500, Sheridan, Wyoming 82801.

21 23. Defendant Venture Partners, LLC, and at all material times represented that it was, a
22 Wyoming- Limited Liability Company, (“Venture”).

23 24. Defendant Venture may be served by first class mail postage prepaid upon its
24 registered agent: Cloud Peak Law, LLC; 1095 Sugar View Dr, Ste 500; Sheridan, Wyoming 82801.

25 **GENERAL ALLEGATIONS**

26 25. On March 20, 2023 (the “Petition Date”), the Debtor filed a voluntary petition for
27 relief under chapter 11 of the Bankruptcy Code, commencing the Bankruptcy Case.

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1 26. After the Office of the United States Trustee (the “UST”) filed the *Motion by United*
2 *States Trustee to Dismiss or Convert Case Pursuant to 11 U.S.C. § 1112(b)* [Bankr. Docket No. 21]
3 and creditors DVF; MC DVI 1; and MC DVI 2, filed their *Motion to Dismiss Chapter 11 Case*
4 *Pursuant to 11 U.S.C. §§ 105, 305, 349, & 1112, or in the Alternative Convert This Case to Chapter*
5 *7 or Appoint a Trustee* [Bankr. Docket No. 44], the Court entered the *Order Directing United States*
6 *Trustee to Appoint Chapter 11 Trustee* [Bankr. Docket No. 58] on May 4, 2021, thereby granting the
7 UST’s motion and directing the UST to appoint a Chapter 11 Trustee in the Bankruptcy Case.

8 27. Pursuant to the *Acceptance of Appointment as Chapter 11 Trustee* [Bankr. Docket No.
9 63], on May 8, 2023, the Plaintiff accepted his appointment as the Chapter 11 Trustee in the
10 Bankruptcy Case, and he continues to serve in this capacity at this time.

11 28. Trustee was not appointed until after events of the case and, therefore, bases these
12 allegations on information and belief. *Soo Park v. Thompson*, 851 F.3d 910, 928 (9th Cir.
13 2017) ("The *Twombly* plausibility standard . . . does not prevent a plaintiff from pleading facts alleged
14 upon information and belief where the facts are peculiarly within the possession and control of the
15 defendant or where the belief is based on factual information that makes the inference of culpability
16 plausible."); *Miller v. City of Los Angeles*, 2014 U.S. Dist. LEXIS 198871, 2014 WL 12610195, at
17 *5 (C.D. Cal. Aug. 7, 2014) (recognizing that the plaintiff's "information and belief" pleading was
18 allowed and "necessary at times"); *see also Mireskandari v. Daily Mail and General Trust PLC*, 2013
19 U.S. Dist. LEXIS 194437, 2013 WL 12129642, at *4 (C.D. Cal. July 31, 2013) ("The Federal Rules
20 of Civil Procedure allow parties to plead facts on 'information and belief' if the facts 'will likely have
21 evidentiary support after a reasonable opportunity for further investigation or discovery.'" (citations
22 omitted)).

23 29. Plaintiff brings this action solely in his capacity as the Chapter 11 Trustee for the
24 benefit of Debtor’s Estate and its creditors.

25 30. Before the bankruptcy filing, LPG operated a law firm for consumers across the
26 country who sought assistance in contesting or resolving debts they would identify. These consumer
27 clients would pay fees to LPG over a period of time, ranging from 18 to 30 months, through monthly
28 debits from their bank accounts. The monthly debits are controlled by LPG. Each set of payments due

1 by a client is referred to as a “file.”

2 31. These monthly payments would cover all legal services that LPG was to provide to
3 these consumer clients including validation of the debts, review of documents to determine
4 enforceability, and court appearances to halt lawsuits to obtain judgments. LPG’s services caused
5 disputed debts to be corrected on the client’s credit report, filed challenges to collection of certain
6 debts under consumer protection laws, and resulted in debt settlement, which the client is responsible
7 to pay. In certain instances, LPG would file a lawsuit in an effort to eliminate a disputed debt.

8 32. Pursuant to applicable legal and ethical rules, these payments should have been held
9 in trust until LPG had performed services or incurred costs related to the consumer client file, or
10 achieved success on the client’s behalf.

11 33. To obtain clients, LPG contracted with marketing companies to refer clients to LPG.
12 The marketing affiliates located clients who were victims of predatory lending or who are subject to
13 claims for large debt that may not be valid or collectable under applicable law. After taking on these
14 clients, LPG promised to pay the marketing affiliates a percentage of the fees that LPG earned from
15 the file(s).

16 34. Because LPG received payments from files over time, it often borrowed against its
17 future cash flow from files to pay current expenses. This borrowing was not only used to finance
18 operations at LPG, but also to pay the fees owed to the marketing companies for providing the client
19 referrals. Upon information and belief, LPG sought financing from numerous entities where the
20 future cash flow from the same files were pledged as collateral to the lender. In other transactions,
21 LPG said it was “selling” the files or the accounts receivable generated from certain files to a creditor
22 in exchange for payment.

23 **FACTUAL BACKGROUND**

24 35. On May 19, 2021, Bridge filed or had a third party file UCC Statement No.
25 U210047914841 against the Debtor with the California Secretary of State (“Bridge Statement”). The
26 Bridge Statement asserted Bridge had a security interest in the assets of the Debtor. A true and
27 accurate copy of the Bridge Statement is attached as **Exhibit A**.

28 36. Bridge has filed Proof of Claim No. 335 against the Debtor (“Bridge Claim”). The

1 Bridge Claim asserts the Debtor owes Bridge more than \$2,344,004.82, excluding interest, fees, and
2 costs, and it is incorporated by reference herein.

3 37. On May 28, 2021, MNS filed UCC Statement NO. U210050823723 against the Debtor
4 with the California Secretary of State (“MNS Statement”). The MNS Statement asserted MNS had a
5 security interest in all the assets of the Debtor. A true and accurate copy of the MNS Statement is
6 attached as **Exhibit B**.

7 38. MNS has filed Proof of Claim No. 1060 against the Debtor (“MNS Claim”). The MNS
8 Claim asserts the Debtor owes Bridge more than \$15,300,000, excluding interest, fees, and costs, and
9 it is incorporated by reference herein.

10 39. On May 28, 2021, CT Corporation System, as agent for Cobalt Funding Solutions,
11 LLC, filed UCC Statement NO. U210050853928 against the Debtor with the California Secretary of
12 State (“Cobalt Statement”). The Cobalt Statement asserts a security interest in all the assets of the
13 Debtor. A true and accurate copy of the Cobalt Statement is attached as **Exhibit C**.

14 40. As set forth herein, Azzure asserts that the Cobalt Statement has been assigned to it
15 and that the Cobalt Statement secures repayment of all amounts owed to it.

16 41. Azzure has filed Proof of Claim No. 127 against the Debtor (“Azzure Claim”), which
17 is incorporated by reference herein. The Azzure Claim asserts that the Debtor owes Azzure more
18 than \$5,000,000.00, excluding interest, fees, and costs and that the repayment of the Azzure Claim is
19 secured by a security interest in the Debtor’s assets that is perfected by the Cobalt Statement. The
20 Azzure Claim is incorporated by reference herein.

21 42. On September 15, 2021, and again on December 1, 2021, Diverse filed UCC
22 Statement No. U210085288536 and U210106788229, respectively, against the Debtor with the
23 California Secretary of State (collectively “Diverse Statement”). The Diverse Statement asserted
24 Diverse had a security interest in the assets of the Debtor. A true and accurate copy of the Diverse
25 Statement is attached hereto as **Exhibit D**.

26 43. As of filing, Diverse has not filed a proof of claim herein; however, upon information
27 and belief, Diverse asserts it is owed more than \$1,485,606, excluding interest, costs, and fees
28 (“Diverse Claim”).

1 44. On February 2, 2023, PECC (“PECC”) filed UCC Statement No. U230009059730
2 against the Debtor with the California Secretary of State (“PECC Statement”). The PECC Statement
3 asserted PECC had a security interest in certain accounts of the Debtor identified on Exhibit A to the
4 PECC Statement. A separate adversary proceeding will be or has been filed against PECC to avoid
5 the filing of the PECC Statement as a preferential transfer and preserve same for the estate and to
6 recover other preferential and fraudulent transfers. PECC is named as a defendant herein only as to
7 Count 7 so that the priority of the PECC Statement can be determined in relation to the other parties
8 and the amount and status of the claim can be determined. A true and accurate copy of the PECC
9 Statement (without exhibits) is attached as **Exhibit E**.

10 45. On February 9, 2023, Proofpositive filed UCC Statement NO. U230009725118
11 against the Debtor with the California Secretary of State (“Proofpositive Statement”). The
12 Proofpositive Statement asserted Proofpositive had a security interest in “\$1,053,690.00 in Litigation
13 Practice Group and associated Litigation Practice Group Affiliate customer accounts receivables
14 files.” A true and accurate copy of the Proofpositive Statement is attached hereto as **Exhibit F**.

15 46. On March 9, 2023, Venture filed UCC Statement No. 230016377733 against the
16 Debtor with the California Secretary of State (“Venture Statement”). The Venture Statement asserted
17 Venture had a security interest in “executed Accounts Receivables Purchase Agreements in the
18 amount of \$15,959,308.55 Debt Enrolled”. A true and accurate copy of the Venture Statement is
19 attached hereto as **Exhibit G**.

20 47. Venture and Proofpositive filed Proof of Claim No. 105 as a joint claim against the
21 Debtor (“PPV Claim”). The PPV Claim asserts the Debtor owes Venture and Proofpositive more
22 than \$15,000,000, excluding interest, fees, and costs, and it is incorporated by reference herein.

23 48. On February 10, 2023, DVF, MCDVI 1, and MCDVI 2 (collectively “DVF Parties”)
24 jointly filed UCC Statement No. 230009923531 against the Debtor with the California Secretary of
25 State (“DVF Statement”). The DVF Statement asserted the DVF Parties had a security interest in all
26 assets of the Debtor. A true and accurate copy of the DVF Statement is attached as **Exhibit H**.

27 49. As of the date of filing, the DVF Parties have not filed a proof of claim herein;
28 however, upon information and belief, the DVF Parties assert they are owed more than ten million

dollars excluding interest, costs, and fees.

50. OHP-CDR, LP fka OHP-LPG, LP (“OHP”) is not presently a defendant herein. OHP filed UCC Statement No. U230005834326 against the Debtor with the California Secretary of State on January 25, 2023 (“OHP Statement”). The validity of the OHP Statement with respect to the Debtor and Azzure is the subject of a pending adversary proceeding (Adversary Pro. No. 8:23-ap-1098) (“OHP Adversary”). PurchaseCo 80, LLC (“PurchaseCo”) is also not presently a defendant herein; however, it is a co-Plaintiff in the OHP Adversary. Upon information and belief, PurchaseCo asserts that it purchased all receivables related to a certain group of client files in September 2022. If PurchaseCo is correct in its assertion and this “purchase” was legally possible, it purchased these receivables subject to whatever valid liens were of record against the Debtor at the time of purchase. Thus, OHP and PurchaseCo are indispensable parties, and Plaintiff will seek to consolidate the OHP Adversary with this adversary. This will permit all claims concerning the OHP Statement and the ownership of receivables from certain files can be adjudicated.

51. Marich asserts that it has a perfected security interest against the Debtor by way of assignment of a UCC Statement No. 210057670018 originally filed by Clearfund Solutions, LLC (“Clearfund”) against the Debtor with the California Secretary of State on June 17, 2021 (“Clearfund Statement”). A true and accurate copy of the Clearfund Statement is attached hereto as **Exhibit I**.

52. Upon information and belief, the Clearfund Statement alone was assigned to Marich on or about August 25, 2022, after the Debtor’s debt to Clearfund had been satisfied (“Marich Assignment”). A true and accurate copy of the Marich Assignment is attached hereto as **Exhibit J**.

53. A separate adversary proceeding will be filed against Marich to determine whether the assignment of the Clearfund Statement to Marich perfects the security interest granted to Marich by the Debtor and to recover other preferential and fraudulent transfers. Marich is named as a defendant herein only as to Count 7 so that the priority of the Clearfund Statement can be determined in relation to the other parties and the amount and status of its claim can be determined.

RESERVATION OF RIGHTS

54. Plaintiff reserves the right to bring all other claims or causes of action that Plaintiff may have against any Defendant herein or subsequently added as a party with leave of court, on any

1 and all grounds, as allowed under the law or in equity, including but not limited to, those claims not
2 known by the Trustee at this time but that he may discover during the pendency of this adversary
3 proceeding or that he may be entitled to assert based on the relief granted in this adversary proceeding.
4 These reserved claims include, but are not limited to, actions to avoid and recover payments or other
5 transfers made to parties herein pursuant to applicable law and objections to allowance and treatment
6 of claims of the Defendants pending all Defendants filing claims and the Court's rulings in this
7 adversary

8 **CLAIMS FOR RELIEF**
9 **COUNT ONE**
10 **DECLARATORY JUDGMENT AS TO THE VALIDITY OF THE**
11 **SECURITY INTEREST OF BRIDGE**

11 55. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

12 56. 28 U.S.C. § 2201(a) provides that “In a case of actual controversy within its
13 jurisdiction...any court of the United States, upon the filing of an appropriate pleading, may declare
14 the rights and other legal relations of any interested party seeking such declaration, whether or not
15 further relief is or could be sought. Any such declaration shall have the force and effect of a final
16 judgment or decree and shall be reviewable as such.”

17 57. Federal Rule of Bankruptcy Procedure 7001 requires any proceeding “to determine
18 the validity, priority, or extent of a lien or other interest in property” or “to obtain a declaratory
19 judgment related to” determining the validity, priority, or extent of a lien or other interest in property
20 to be filed as an adversary proceeding.

21 58. According to the verified answer and counterclaims filed on behalf of the Debtor and
22 other Defendants in state court litigation against Bridge, the Debtor's relationship with Bridge began
23 with the execution of a Merchant Cash Advance Agreement on or about May 17, 2021. This
24 agreement allegedly documented Bridge's purchase of \$749,500.00 in future receivables for a gross
25 purchase price of \$500,000.00

26 59. After the execution of this agreement, Bridge filed the Bridge Statement on May 19,
27 2021.

28 60. Bridge only advanced \$400,000.00 to the Debtor pursuant to the May 17th agreement.

1 Upon information and belief, Bridge retained the \$100,000.00 difference to pay itself various fees.

2 61. Following execution of the May 17th agreement, the Debtor paid \$465,000.00 to
3 Bridge to be applied to it \$749,500.00 debt.

4 62. Again, according to the Debtor's verified state court answer and counterclaims, Bridge
5 approached the Debtor and related parties about refinancing the balance owed on the May 17th
6 agreement. The result of this refinance was a May 27, 2021 agreement whereby Bridge allegedly
7 purchased \$1,799,100.00 in future receivables in exchange for a purchase price of \$900,000.00
8 According to the verified answer, the Debtor only received \$267,000.00 in additional funds as a result
9 of this refinance.

10 63. As of June 17, 2021, the Debtor had paid \$1,050,000.00 to Bridge on its \$1,799,100.00
11 debt owed under the May 27th agreement.

12 64. Thereafter, Bridge declared the Debtor in default, and on June 28, 2021, Berkovitch
13 & Bouskila, PLLC sued the Debtor on behalf of Bridge in the Supreme Court of Nassau County Index
14 No. 608157/2021 ("Bridge Lawsuit"). A true and accurate copy of this Complaint including the May
15 27th agreement as an exhibit is attached as **Exhibit K**.

16 65. While the Debtor claimed the Complaint sought to recover far more than was owed
17 under the May 27th agreement, the parties agreed to settle the Bridge Lawsuit provided that the Debtor
18 paid \$849,240.00 ("Settlement Payment") to Bridge on or before July 1, 2021.

19 66. A Stipulation of Settlement with Leave to Apply for Default Judgment Pursuant to
20 CPLR 3215(i) ("Stipulation") was prepared and executed to settle the Bridge Lawsuit. The Debtor
21 executed the Stipulation on July 17, 2021. A true and accurate copy of the Stipulation is attached as
22 **Exhibit L**.

23 67. The Debtor wired the Settlement Payment to counsel for Bridge - Berkovitch &
24 Bouskila PLLC – on or before July 1, 2021.

25 68. Paragraph 5 of the Stipulation is titled Effective Date and provides in relevant part
26 "that the Agreement shall become binding and be closed by the execution hereof by all parties."

27 69. Paragraph 7 of the Stipulation is titled Waiver of Defendant's [sic] Liability and states
28 that Bridge as Plaintiff

1 waives all legal rights and claims as to the underlying Agreements that the debt
2 arose from. Plaintiff acknowledges that any and all legal claims it maintains must
3 be brought by a breach of this settlement agreement, and releases Defendants from
any claims Plaintiff may have against Defendants from the beginning of time until
this day.

4 70. Paragraph 11 of the Stipulation is titled Execution and Delivery of Documents and
5 states that

6 The Parties agree that they respectively shall ... execute and deliver promptly any
7 and all such documentation, or documents of any and every kind and character as
8 may reasonably be required, necessary or proper for the purpose of giving full force
and effect to this agreement...the parties agree to cooperate and to do all things
necessary to accomplish the intention of this agreement.

9 71. By its own terms, the Stipulation was effective when executed by the Debtor and other
10 Defendants on July 19, 2021.

11 72. While the Stipulation was not filed in the Bridge Lawsuit, counsel for Bridge did file
12 a Notice discontinuing the Bridge Lawsuit in its entirety on July 1, 2021. The filing of the Notice is
13 confirms that the Debtor performed under the terms of the Stipulation. A true and accurate copy of
14 the Notice is attached as **Exhibit M**.

15 73. Upon information and belief and according to the Debtor's verified state court answer
16 and counterclaims, a representative from Fundura Capital Group ("Fundura") contacted Mr. Diab in
17 early July to propose the Debtor execute a Merchant Cash Advance Agreement with Fundura.

18 74. Upon information and belief and according to the Debtor's verified state court answer
19 and counterclaims, Mr. Diab told Joe Kroen – the Fundura representative – that if Fundura was
20 connected to Bridge that the Debtor was not interested in doing business with Fundura. In response,
21 Mr. Kroen told Mr. Diab there was no connection between Fundura and Bridge.

22 75. Fundura is listed as an assumed name of Bridge with the New York Secretary of State.

23 76. On or about July 14, 2021, the Debtor and Bridge dba Fundura executed a Merchant
24 Cash Advance Agreement documenting Bridge dba Fundura's purchase of \$999,990.00 in future
25 receivables for a gross purchase price of \$500,000.00.

26 77. While the July 14th Merchant Cash Advance Agreement granted Bridge dba Fundura
27 a security interest in the Debtor's accounts, Bridge dba Fundura did not record a UCC-1 Statement
28 against the Debtor following execution of the agreement.

1 78. If Bridge dba Fundura had filed a UCC-1 Statement on or after July 14th, it would have
2 been subordinate to multiple other UCC-1 Statements already of record.

3 79. On or about July 15, 2021, Bridge dba Fundura wired \$390,000.00 to the Debtor and/or
4 its co-borrowers. Bridge dba Fundura provided no explanation for the difference between the gross
5 purchase price of \$500,000.00 and the \$390,000.00 actually advanced.

6 80. Within a week Bridge dba Fundura declared the Debtor to be in default under the July
7 14th Agreement despite the fact that the Debtor had paid and even pre-paid the daily installment
8 payments to Bridge dba Fundura.

9 81. Upon information and belief and according to the Debtor's verified state court answer
10 and counterclaims, Bridge dba Fundura, through its counsel Berkovitch & Bouskila PLLC, made
11 demand for payment on the Debtor's payment processor. However, Bridge dba Fundura asserted a
12 perfected security interest in the Debtor's assets based on the Bridge Statement.

13 82. Bridge dba Fundura did not terminate or release the Bridge Statement following
14 receipt of the Settlement Payment and Stipulation.

15 83. In response to the demand of Bridge dba Fundura and based on the recorded Bridge
16 Statement, the Debtor's payment processor froze the Debtor's accounts.

17 84. Bridge dba Fundura refused to authorize the payment processor to unfreeze the
18 accounts despite the Debtor disputing there was a default and the receipt of multiple payments from
19 the Debtor.

20 85. Bridge dba Fundura proposed that the Debtor refinance the balance owed to it under
21 the July 14th agreement via a new agreement. This new Merchant Cash Advance Agreement was
22 executed on or about July 22, 2021 and stated that Bridge dba Fundura was purchasing \$1,986,000.00
23 in future receivables for a gross purchase price of \$1,200,000.00 ("July 22nd Agreement"). A true
24 and accurate copy of the July 22nd Agreement is attached as **Exhibit N**.

25 86. Section 4.9 of the July 22nd Agreement provided that the July 22nd Agreement
26 contained "the entire agreement between Merchant and FCG and supersedes all prior agreements and
27 understandings relating to the subject matter hereof."

28 87. Upon information and belief and according to the Debtor's verified state court answer

1 and counterclaims, the Debtor had paid more than \$250,000.00 to Bridge dba Fundura on the July
2 14th Agreement before the July 22nd Agreement was executed.

3 88. Despite these payments, the Debtor received no additional funds from the July 22nd
4 Agreement and according to the Debtor's verified answer and counterclaim in state court, \$1,124,987
5 of the funds disbursed pursuant to the July 22nd Agreement was paid to Berkovitch and Bouskila
6 PLLC to satisfy all amounts owed under the July 14th Agreement.

7 89. The Trustee does not know how this payoff amount was determined or who received
8 these funds given that the original amount to be repaid under the July 14th Agreement was
9 \$999,990.00 and the Debtor had previously paid more than \$250,000.00 to Bridge on that obligation.

10 90. Upon information and belief and according to the Debtor's verified state court answer
11 and counterclaims, the Debtor paid \$350,000.00 to Bridge dba Fundura pursuant to the July 22nd
12 Agreement from July 27, 2021 to August 4, 2021.

13 91. On or about August 11, 2021, Bridge dba Fundura declared a default under the July
14 22nd Agreement and asserted its lien rights to the Debtor's accounts with the Debtor's payment
15 processor based on the Bridge Statement. Again, the payment processor froze the Debtor's accounts.

16 92. Upon information and belief, Bridge dba Fundura's numerous declarations of default
17 and demands to freeze the Debtor's accounts disrupted the Debtor's operations and caused the Debtor
18 to borrow additional amounts from Merchant Cash Advance lenders to maintain operations while its
19 accounts were frozen or suspended.

20 93. Bridge dba Fundura first filed suit on the July 22nd Agreement in the Supreme Court
21 for Nassau County on or about August 25, 2021. However, the Judge hearing the case refused to
22 enter a preliminary injunction and temporary restraining order to attach and restrain the Debtor's
23 accounts. Bridge dba Fundura subsequently dismissed that action with prejudice.

24 94. Bridge dba Fundura filed a second suit to enforce the July 22nd Agreement with the
25 Supreme Court of Nassau County on or about October 18, 2021 (Index Number 613192/2021). The
26 Debtor filed a verified answer with counterclaims in this action which has been referenced in this
27 complaint.

28 95. This case remained unresolved as of the Petition Date.

1 96. The Bridge Statement perfected a security interest granted to Bridge in an earlier prior
2 transaction. However, Bridge subsequently released the Debtor “from any claims [Bridge] may have
3 against Defendants from the beginning of time until this day.”

4 97. Bridge’s release of all claims against the Debtor became effective when the
5 Defendants, including the Debtor, executed the Stipulation on July 19, 2021.

6 98. Due to the release of claims in the Stipulation, Bridge dba Fundura waived and
7 released its ability to enforce the Bridge Statement and to enforce the July 14th Agreement because
8 the release of claims began “from the beginning of time until this day [of execution].”

9 99. Despite its release of all claims against the Debtor in the underlying documents, Bridge
10 continued and still continues to assert that the amounts owed to it are secured by the Bridge Statement
11 filed pursuant to those settled documents.

12 100. In late 2022, the Debtor wrote to Bridge dba Fundura demanding that it release the
13 Bridge Statement pursuant to Section 9-513 of the Uniform Commercial Code (“Release Letter”).
14 The Debtor’s basis for this demand was that it had not only discharged all obligations owed to Bridge
15 dba Fundura pursuant to the first two Merchant Cash Advance Agreements executed in May 2021,
16 but also that Bridge dba Fundura had waived and released all claims it ever had against the Debtor as
17 of July 19, 2021. A true and accurate copy of the Release Letter from the state court litigation is
18 attached as **Exhibit O**.

19 101. Upon information and belief, Fundura failed to respond to the Release Letter, and
20 pursuant to Section 9-513(c) of the Uniform Commercial Code (N.Y. UCC §1-201(b)(20)/Cal.
21 Comm. Code. § 9513), the Debtor terminated the Bridge Statement with the California Secretary of
22 State. A true and accurate copy of the Termination Statement filed with the Secretary of State is
23 attached as **Exhibit P**.

24 102. Bridge subsequently filed an “information statement” with the Secretary of State
25 stating that it did not authorize the termination. Section 9-518(e) of the Uniform Commercial Code
26 states that an information statement “does not affect the effectiveness of an initial financing statement
27 or other filed record.”

28 103. A search of the Debtor’s name on the Secretary of State’s website using standard

1 search logic shows the Bridge Statement to be terminated.

2 104. The Bridge Statement is not enforceable against the Debtor or its estate because Bridge
3 released all of its claims against the Debtor in the Stipulation. Because Bridge waived any and all
4 claims against the Debtor as of July 19, 2021, it has no right to use the Bridge Statement, which was
5 filed pursuant to the settled documents, to perfect a subsequently granted security interest from a
6 separate transaction.

7 105. The Bridge Statement is not enforceable against the Debtor or its estate because Bridge
8 was obligated to release the Bridge Statement pursuant to Paragraph 11 of the Stipulation.

9 106. When Bridge failed to release the Bridge Statement pursuant to the Stipulation, the
10 Debtor made an authenticated demand on Bridge to release the Bridge Statement pursuant to Section
11 9-513 of the Uniform Commercial Code.

12 107. The Debtor was authorized to file the Termination Statement pursuant to Section 9-
13 513 of the Uniform Commercial Code when Bridge failed to release the Bridge Statement within the
14 time provided by the UCC.

15 108. Section 544(a) of the Bankruptcy Code provides the Trustee with the rights and powers
16 of a hypothetical judicial lien creditor and a hypothetical judgment creditor as of the commencement
17 of the case “without regard to any knowledge of the trustee or of any creditor[.]”

18 109. Because a standard search of the California Secretary of State’s Office indicates that
19 the Bridge Statement was terminated, the Bridge Statement was unperfected as of the Petition Date
20 as to a hypothetical lien or judgment creditor. As a result, the Bridge Statement is void and
21 unenforceable as to the Trustee.

22 110. An actual controversy exists regarding the validity, existence, and rights and
23 obligations of the parties herein with respect to the Bridge Statement.

24 111. Pursuant to 28 U.S.C. § 2201, and for the foregoing reasons, Trustee seeks a
25 declaration from the Court that (i) adjudicates the validity, priority, and extent of the Bridge
26 Statement; (ii) determines the amount of the Bridge Claim; and (iii) finds that Bridge does not have
27 an ownership interest in client files or in any future accounts receivable therefrom as a matter of law.

28

COUNT TWO
**DECLARATORY JUDGMENT AS TO THE VALIDITY OF THE
SECURITY INTEREST OF MNS**

112. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

113. 28 U.S.C. § 2201(a) provides that “In a case of actual controversy within its jurisdiction...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”

114. Federal Rule of Bankruptcy Procedure 7001 requires any proceeding “to determine the validity, priority, or extent of a lien or other interest in property” or “to obtain a declaratory judgment related to” determining the validity, priority, or extent of a lien or other interest in property to be filed as an adversary proceeding.

115. While the MNS Statement asserts a lien against all of the Debtor’s assets, MNS has not filed any documents with the MNS Claim that indicated that the Debtor granted it a security interest or authorized it to perfect that security interest through filing a UCC-1 statement.

116. The only evidence of indebtedness filed with the MNS Claim is a printout of transactions and a lockbox agreement dated July 17, 2021. The lockbox agreement was executed almost two months after the MNS Statement was filed.

117. To the extent MNS asserts ownership of the “accounts” related to client files generally or to certain client files, the Trustee alleges that any purported sale of either client files, or the future “accounts” or right to payment from trust funds from clients is unenforceable as a matter of law.

118. Trustee thus alleges that MNS never acquired title to or possession of any of underlying client files or related receivables from those files. MNS could not acquire any accounts related to client files because such an account could only be generated when the Debtor performed legal services for the client.

119. While the MNS Claim was filed as a secured claim that was entitled to priority over other creditors asserting secured claims, the Trustee cannot agree that MNS has a security interest or was entitled to record a UCC-1 statement against the Debtor based on the document tsfiled with the

1 MNS Claim. The Trustee cannot also agree to the amount of the MNS Claim given the lack of
2 documentation or detail on the calculation of the amount of the claim.

3 120. An actual controversy exists regarding the validity, existence, and rights and
4 obligations of the parties herein with respect to the MNS Statement.

5 121. Pursuant to 28 U.S.C. § 2201, and for the foregoing reasons, Trustee seeks a
6 declaration from the Court that (i) adjudicates the validity, priority, and extent of the MNS Statement;
7 (ii) determines the amount of the MNS Claim; and (iii) finds that MNS does not have an ownership
8 interest in client files or in any future accounts receivable therefrom as a matter of law.

9 **COUNT THREE**
10 **DECLARATORY JUDGMENT AS TO THE VALIDITY OF THE**
SECURITY INTEREST OF AZZURE

11 122. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

12 123. 28 U.S.C. § 2201(a) provides that “In a case of actual controversy within its
13 jurisdiction...any court of the United States, upon the filing of an appropriate pleading, may declare
14 the rights and other legal relations of any interested party seeking such declaration, whether or not
15 further relief is or could be sought. Any such declaration shall have the force and effect of a final
16 judgment or decree and shall be reviewable as such.”

17 124. Federal Rule of Bankruptcy Procedure 7001 requires any proceeding “to determine
18 the validity, priority, or extent of a lien or other interest in property” or “to obtain a declaratory
19 judgment related to” determining the validity, priority, or extent of a lien or other interest in property
20 to be filed as an adversary proceeding.

21 125. On or around February 7, 2023, Azzure made a loan to the Debtor evidenced by a
22 promissory note in the original principal amount of two million five hundred and fifty thousand
23 dollars and no cents (\$2,550,000.00) (“Azzure Note”). The Azzure Note carried an interest rate of
24 one hundred and seventy percent (170%). Azzure was granted a security interest against certain
25 “Collateral” defined in Section 9 of the Azzure Note.

26 126. Because any security interest filed after the execution of the Azzure Note would be
27 subordinate to the numerous other UCC Statements of record, Azzure sought to obtain an assignment
28 of a previously filed UCC-1 Statement.

1 127. The Cobalt Statement was recorded on May 28, 2021 and the debt owed to Cobalt was
2 satisfied in a settlement completed in February 2022.

3 128. As part of this settlement, Cobalt and another lender, Queen Funding, LLC, with an
4 interest in the debt assigned the Cobalt Statement to BAE Enterprises, Inc. (“BAE”). A true and
5 accurate copy of the assignment of the Cobalt Statement to BAE is attached hereto as **Exhibit Q**.

6 129. Upon information and belief, Tony Diab is the principal of BAE although at the time
7 of the assignment to BAE it has been alleged that Mr. Diab’s girlfriend – Biance Loli – was the CEO
8 of BAE.

9 130. Upon information and belief, Azzure demanded that BAE assign the Cobalt Statement
10 to it as a condition of the Azzure transaction. In February 2023, BAE purported to assign the Cobalt
11 Statement to Azzure (“Azzure Assignment”). A true and accurate copy of the Azzure Assignment is
12 attached hereto as **Exhibit R**.

13 131. Bae only transferred its interest in the Cobalt Statement to Azzure. Bae did not sell,
14 assign, or transfer any obligation or other debt owed to it by the Debtor to Azzure.

15 132. Upon information and belief, Azzure did not re-finance or acquire any debt of the
16 Debtor that was secured by the Cobalt Statement.

17 133. As a matter of law, the Trustee asserts that Azzure’s attempt to “line jump” the
18 Debtor’s creditors fails. The assignment of a recorded financing statement alone is not sufficient to
19 perfect an obligation and security interest created months after the initial statement was recorded.

20 134. The Cobalt Statement perfected a security interest granted to the original creditor to
21 secure payment of an obligation. When the obligation owed to the original creditor was satisfied,
22 there was no longer a security interest for the Cobalt Statement to perfect.

23 135. The Trustee also cannot agree on the amount of the Azzure Claim as it seeks to recover
24 more than five million dollars (\$5,000,000.00) despite the fact that the original principal balance of
25 the Azzure Note was only just over two and a half million dollars. The amount sought includes
26 accrued interest as set forth in the Azzure Note, plus attorneys’ fees and costs.

27 136. The one hundred and seventy percent interest rate contained in the Azzure Note is not
28 enforceable against the Debtor located in California.

1 137. Further, to the extent Azzure asserts ownership of the “accounts” related to client files
2 generally or to certain client files, the Trustee alleges that any purported sale of either client files, or
3 the future “accounts” or right to payment from trust funds from clients is unenforceable as a matter
4 of law.

5 138. Trustee alleges that Azzure never acquired title to or possession of any of underlying
6 files or related receivables from those files. Azzure could not acquire any accounts related to client
7 files because such an account could only be generated when the Debtor performed legal services for
8 the client.

9 139. Despite the foregoing, Azzure asserts that the Azzure Claim is perfected by and has
10 priority pursuant to the Cobalt Statement. Azzure further asserts that the Azzure Claim has priority
11 over the security interests of any other creditors.

12 140. An actual controversy exists between Azzure and the Trustee as to the Azzure Claim
13 and the effectiveness of the Cobalt Statement.

14 141. Pursuant to 28 U.S.C. § 2201, and for the foregoing reasons, Trustee seeks a
15 declaration from the Court that (i) adjudicates the validity, priority, and ability of the Cobalt Statement
16 to secure payment of the Azzure Claim; (ii) determines the amount of the Azzure Claim; and (iii)
17 finds that Azzure does not have an ownership interest in client files or in any future accounts
18 receivable therefrom as a matter of law.

19 **COUNT FOUR**
20 **Avoidance, Recovery, and Preservation of Fraudulent Transfers**
21 **Against Defendant Diverse**
[11 U.S.C. §§ 548(a)(1)(B), 550, and 551]

22 142. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

23 143. On August 6, 2021, the Debtor and Diverse executed a Merchant Agreement whereby
24 it purportedly sold \$374,750.00 of its future receivables in exchange for \$250,000.00 (“First Diverse
25 Agreement”). Repayment was to be a daily debit of the Debtor’s account in the amount of \$9,730.00
26 until Diverse was paid in full. The Trustee does not know what portion of the \$250,000.00 the Debtor
27 received or if the payment was even deposited in the Debtor’s bank account. A true and accurate
28 copy of the First Diverse Agreement is attached as **Exhibit S**.

1 144. On August 18, 2021, the Debtor and Diverse executed a Merchant Agreement whereby
2 it purportedly sold \$749,500.00 of its future receivables in exchange for \$500,000.00 (“Second
3 Diverse Agreement”). Repayment was to be a daily debit of the Debtor’s account in the amount of
4 \$13,325.00 until Diverse was paid in full. The Trustee does not know what portion of the \$500,000.00
5 the Debtor received or if the payment was even deposited in the Debtor’s bank account. A true and
6 accurate copy of the Second Diverse Agreement is attached as **Exhibit T**.

7 145. On August 18, 2021, the Debtor and Diverse executed a Merchant Agreement whereby
8 it purportedly sold \$1,499,000.00 of its future receivables in exchange for \$1,000,000.00 (“Third
9 Diverse Agreement”). Repayment was to be a daily debit of the Debtor’s account in the amount of
10 \$24,985.00 until Diverse was paid in full. The Trustee does not know what portion of the
11 \$1,000,000.00 the Debtor received or if the payment was even deposited in the Debtor’s bank account.
12 A true and accurate copy of the Third Diverse Agreement is attached hereto as **Exhibit U**.

13 146. On October 28, 2021, Diverse sued the Debtor and other parties in the Supreme Court
14 of the State of New York, County of Kings after an alleged default on the three agreements identified
15 above. In the complaint, Diverse sought to recover (i) \$279,050.00 on the First Diverse Agreement,
16 (ii) \$695,800.00 on the Second Diverse Agreement, and (iii) \$1,384,660.00 on the Third Diverse
17 Agreement. Thus, the complaint sought to recover a total of \$2,359,510.00.

18 147. Upon information and belief, the parties settled the state court lawsuit as an order
19 dismissing the suit without prejudice was filed on May 10, 2022.

20 148. A few days later the Debtor made a \$125,000 payment to Diverse on May 18, 2022.
21 Upon information and belief, similar \$125,000 monthly payments were made to Diverse from June
22 2022 to January 2023 with the exception of February 2023 when only \$25,000 was paid and
23 December 2022 when it appears no payment was made. These payments from May 2022 to February
24 2023 totaled \$1,025,000.00.

25 149. Upon information and belief and despite these payments, Diverse still claims to be
26 owed more than \$1,400,000.00. Diverse has not yet filed a proof of claim.

1 150. The execution of the First, Second, and Third Diverse Agreements (collectively
2 “Diverse Agreements”) and the filing of the two Diverse Statements all occurred within two years of
3 the Petition Date.

4 151. On or after the date that the Diverse Agreements were executed and the Diverse
5 Statements were recorded, the Debtor was indebted to one or more creditors, including but not limited
6 those Defendants listed before Diverse in the caption of this adversary.

7 152. Upon information and belief, the Debtor did not receive reasonably equivalent value
8 in exchange for the execution of the Diverse Agreements because the Diverse Agreements were
9 disguised loans contained usurious interest rates, required the Debtor to repay approximately 1.5
10 times the amount borrowed in a short amount of time, and/or withheld substantial sums from the
11 amount loaned or paid to purchase receivables as “fees” such that the Debtor was obligated to repay
12 amounts it never borrowed or obtained. To the extent known to the Trustee, the specifics of the
13 respective transactions are set out herein.

14 153. The execution of the Diverse Agreements and subsequent filing of the Diverse
15 Statements happened while Debtor:

- 16 a. was insolvent or became insolvent as a result;
17 b. was engaged or was about to engage in a transaction for which any property remaining
18 with Debtor was of unreasonably small capital; or
19 c. intended to incur, or believed that it would incur, debts beyond its ability to pay as such
20 debts matured.

21 154. When the Diverse Statements were executed in August, 2021 the Debtor had already
22 been sued in New York state court by several other Merchant Cash Advance Lenders for
23 nonpayment. Upon information and belief, the Debtor was borrowing money from new Merchant
24 Cash Advance Lenders to pay off amounts owed to prior Merchant Cash Advance Lenders.

25 155. The execution of the Diverse Agreements and subsequent recording of the Diverse
26 Statements should be avoided as fraudulent conveyances under 11 U.S.C. § 548(a)(1)(B), and such
27 transferred property, or the value thereof, should be recovered and preserved for the benefit of the
28 Estate pursuant to 11 U.S.C. §§ 550 and 551.

COUNT FIVE

**AVOIDANCE, RECOVERY, AND PRESERVATION OF PERFECTION OF SECURITY
INTERESTS OF PROOFPOSITIVE, VENTURE, AND THE DVF PARTIES AS
PREFERENTIAL TRANSFERS PURSUANT TO 11 U.S.C. §§ 548, 550, AND 551**

156. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

157. The Proofpositive Statement, DVF Statement, and Venture Statement (collectively “Preference Period Statements”) were all filed within the ninety day period preceding the Petition Date.

158. The filing of the Preference Period Statements constituted a transfer of an interest in property of the Debtor.

159. The Proofpositive Statement was recorded more than thirty days after the Debtor granted that creditor the right to file a security interest to secure its performance under one or more obligations.

160. The DVF Statement was recorded more than thirty days after the Debtor granted the creditors identified therein the right to file a security interest to secure its performance under one or more obligations owed to the DVF Parties.

161. The Venture Statement was recorded more than thirty days after the Debtor granted that creditor the right to file a security interest to secure its performance under one or more obligations.

162. The Debtor was indebted those defendants who recorded the Preference Period Statements prior to the recording of the above Statements.

163. The filing of the Preference Period Statements was a transfer made to or for the benefit of a creditor within the meaning of 11 U.S.C. § 547(b)(1) because the recording of these statements perfected the security interest granted to the these creditors to secure the Debtor’s obligations to them.

164. The transfer of an interest in the Debtor’s assets occurred when the Preference Period Statements were filed pursuant to 11 U.S.C. § 547(e)(2)(B).

165. The filing of the Preference Period Statements was made for, or on account of, an antecedent debt or debts owed by the Debtor to the filers of the Preference Period Statements, each of which constituted a “debt” or “claim” (as those terms are defined in the Bankruptcy Code) of

1 Defendant.

2 166. The Preference Period Statements were filed when the Debtor was insolvent. Plaintiff
3 is also entitled to the presumption of insolvency in the ninety day period before the Petition Date
4 pursuant to 11 U.S.C. § 547(f).

5 167. Each of the Preference Period Statements were recorded in the ninety day period
6 preceding the Petition Date.

7 168. As a result of the filing of the Preference Period Statements, Proofpositive, DVF
8 Parties, and Venture would be entitled to recover more than they would have received if: (i) the
9 Debtor's case was under chapter 7 of the Bankruptcy Code; (ii) the respective Statement had not been
10 filed; and (iii) the above creditors received payments of their debts under the provisions of the
11 Bankruptcy Code. As evidenced by the Debtor's schedules filed in the underlying Bankruptcy Case,
12 as well as the proofs of claim that have been received to date, the Debtor's liabilities exceed its assets
13 to the point that unsecured creditors will not receive a full payout of their claims from the Debtor's
14 bankruptcy estate.

15 169. In accordance with the foregoing, the filing of the Preference Period Statements are
16 avoidable pursuant to 11 U.S.C. § 547(b), and may be recovered and preserved for the benefit of the
17 estate pursuant to 11 U.S.C. §§ 550 and 551.

18 170. Because the priority of the avoided liens with respect to other creditors and the amount
19 of the claims they secure must be determined, it has not been possible to settle these claims. .

20 **COUNT SIX**
21 **AVOIDANCE, RECOVERY, AND PRESERVATION OF FRAUDULENT TRANSFERS**
22 **AGAINST DEFENDANTS BRIDGE, MNS, AND AZZURE**
[11 U.S.C. §§ 548(a)(1)(B), 550, and 551]

23 171. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

24 172. Counts One, Two, and Three ask the Court to find that the UCC Statements filed by
25 Defendants Bridge, MNS, and Azzure are void and unenforceable for the specific reasons stated in
26 those counts.

27 173. If the Court determines that the UCC Statements filed by Bridge, MNS, and/or Azzure
28 are valid and enforceable, the Trustee requests that the Court find that the execution of the underlying

1 agreements between the Debtor and those entities and the subsequent filing and/or assignment of any
2 financing statements were fraudulent transfers (collectively “Transfers”) subject to avoidance
3 pursuant to 11 U.S.C. §§ 548(a)(1)(A) and 550 and 551.

4 174. The Transfers between the Debtor and Bridge, MNS, and Azzure all occurred within
5 the two years of the Petition Date.

6 175. When Bridge and MNS filed their respective UCC Statements, the filing perfected
7 whatever security interest the Defendant had been granted by the Debtor.

8 176. When Azzure obtained an assignment of the Cobalt Statement filed by another
9 creditor of the Debtor, it asserts that it perfected the security interest granted to it in the Azzure Note
10 as of the date the Cobalt Statement was originally filed.

11 177. On or after the date that the above Transfers occurred, the Debtor was indebted to
12 one or more creditors, including but not limited to the some of the Defendants identified herein and
13 State of California, Employment Development Department and Ace Funding Source, LLC as
14 evidenced by UCC-1 Statements filed on November 3, 2020 and May 14, 2021, respectively.

15 178. The Debtor did not receive reasonably equivalent value in exchange for the
16 Transfer(s) because the underlying agreements contained usurious interest rates, required the Debtor
17 to repay twice the amount of the money it actually borrowed over a short term, and/or withheld
18 substantial sums from the amount loaned or paid to purchase receivables as “fees” such that the
19 Debtor was obligated to repay amounts it never borrowed or obtained. To the extent known to the
20 Trustee, the specifics of the respective transactions are set out *supra* and are incorporated by
21 reference herein.

22 179. The Transfers happened while Debtor:
23 a. was insolvent or became insolvent was a result;
24 b. was engaged or was about to engage in a transaction for which any property
25 remaining with Debtor was of unreasonably small capital; or
26 c. intended to incur, or believed that it would incur, debts beyond it ability to pay
27 as such debts matured.

28 180. The Transfers should be avoided as fraudulent conveyances under 11 U.S.C.

1 § 548(a)(1)(B), and such transferred property, or the value thereof, should be recovered and
2 preserved for the benefit of the Estate pursuant to 11 U.S.C. §§ 550 and 551.

3 **COUNT SEVEN**
4 **DECLARATORY JUDGMENT AS TO ALL DEFENDANTS (I) TO DETERMINE THE**
5 **NATURE, EXTENT, AND PRIORITY OF VALID AND PERFECTED SECURITY**
6 **INTERESTS AGAINST THE DEBTOR INCLUDING THOSE SECURITY INTERESTS**
7 **THAT ARE VALID BUT HAVE BEEN AVOIDED AND PRESERVED FOR THE BENEFIT**
8 **OF THE ESTATE AND (II) TO DETERMINE THE SECURED AND UNSECURED**
9 **AMOUNTS OF THE DEFENDANTS' CLAIMS IF NOT OTHERWISE DETERMINED**
10 **HEREIN.**

11 181. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

12 182. 28 U.S.C. § 2201(a) provides that “In a case of actual controversy within its
13 jurisdiction...any court of the United States, upon the filing of an appropriate pleading, may declare
14 the rights and other legal relations of any interested party seeking such declaration, whether or not
15 further relief is or could be sought. Any such declaration shall have the force and effect of a final
16 judgment or decree and shall be reviewable as such.”

17 183. Federal Rule of Bankruptcy Procedure 7001 requires any proceeding “to determine
18 the validity, priority, or extent of a lien or other interest in property” or “to obtain a declaratory
19 judgment related to” determining the validity, priority, or extent of a lien or other interest in property
20 to be filed as an adversary proceeding.

21 184. Based on the filed proofs of claim and the records of the California Secretary of State,
22 the Defendants are asserting or had asserted a security interest against some or all of the Debtor’s
23 assets. While applicable law provides that the priority of security interests is determined by the date
24 of perfection by filing, some of the Defendants have challenged the validity and priority of the security
25 interests of other Defendants.

26 185. As stated in detail herein, the Trustee also asserts that the security interests of some
27 Defendants are void, unenforceable, and/or are subject to avoidance and preservation for the benefit
28 of the estate. To the extent the Trustee is successful in avoiding and preserving those security interests
for the benefit of the estate, the Trustee requests that the Court determine the priority of those avoided
and preserved security interests as well.

1 186. To the extent the any Defendants assert ownership of the “accounts” related to client
2 files generally or to certain client files, the Trustee alleges that any purported sale of either client files,
3 or the future “accounts” or right to payment from trust funds from clients is unenforceable as a matter
4 of law.

5 187. Trustee thus alleges that the Defendants never acquired title to or possession of any of
6 underlying client files or related receivables from those files. The Defendants could not acquire any
7 accounts related to client files because such receivables could only be generated when the Debtor
8 performed legal services for the client.

9 188. Upon information and belief, each Defendant asserts a security interest against the
10 Debtor’s assets and some assert their interest is superior to the claims of other Defendants. Given
11 this, the Trustee has been unable to establish the amount, validity, or priority of the claim of any
12 Defendant without the consent or acquiescence of the remaining Defendants.

13 189. 11 U.S.C. § 506(a) provides that a claim is only secured “to the extent of the value of
14 such creditor’s interest in the estate’s interest in such property ... and is an unsecured claim to the
15 extent that the value of such creditor’s interest ... is less than the amount of such allowed claim.”

16 190. The Trustee has sought herein to avoid and preserve a number of the security interests
17 of the Defendants that were perfected by the filing of a UCC Statement. The Trustee has also asked
18 for the lien of one Defendant to be subordinated in favor of the estate based on pre-petition conduct
19 in the even the Court determines that Defendant has a valid lien.

20 191. An actual controversy exists regarding the nature, extent, and, priority as well as the
21 secured status, and the actual amount owed to the Defendants herein. The Trustee is expressly
22 reserves the right to object to the allowance of any claim once the (i) a claim is filed or (ii) the amount
23 of the claim is determined.

24 192. The Trustee respectfully requests that the Court determine the nature, extent, and
25 priority of the security interests of the Defendants either through litigation or settlement including the
26 priority of any security interests that may otherwise be valid but for the fact that the Trustee was able
27 to avoid and preserve the perfection of that security interest for the benefit of the estate.

28

1 193. Pursuant to 11 U.S.C. § 506(a), the Trustee also respectfully requests that the Court
2 determine the amount of the claims of the Defendants herein, including the secured portion of such
3 claims if not already determined herein or in another proceeding.

4 194. Pursuant to 28 U.S.C. § 2201, and for the foregoing reasons, Plaintiff seeks a
5 declaration from the Court that (i) adjudicates the priority and extent of the security interests of the
6 Defendants who have enforceable security interests perfected by filings with the California Secretary
7 of State including those otherwise valid security interests that the Trustee has been able to avoid and
8 preserve for the benefit of the estate; (ii) determines the amount of the claims that are secured by valid
9 security interests against the Debtor including the secured portion of those claims; and (iii) finds that
10 no Defendant has an ownership interest in client files or in any future accounts receivable therefrom
11 as a matter of law.

12 **COUNT EIGHT**
13 **SUBORDINATION OF PROOF OF CLAIM OF BRIDGE**
14 **[11 U.S.C. §§ 510(c)]**

15 195. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

16 196. The Bridge Claim was filed as a secured claim in the amount of \$2,374,004.82 as Proof
17 of Claim Number 335.

18 197. As discussed herein, the Bridge Claim seeks to collect a debt pursuant to a July 22,
19 2021 Merchant Cash Advance Agreement executed under an assumed name. However, Bridge claims
20 that the repayment of this debt is secured by a security interest the Debtor granted to Bridge in a May
21 17, 2021 agreement that was perfected when the Bridge Statement was filed on or about May 19,
22 2021.

23 198. The Debtor stated that it was tricked and defrauded into borrowing from Bridge doing
24 business as Fundura.

25 199. As discussed herein, Bridge both enforced the Bridge Statement against the Debtor
26 pre-petition, which caused disruption to its business, and is now attempting to enforce the Bridge
27 Statement against the Debtor post-petition to assert a secured claim. However, Bridge released “all
28 legal rights and claims as to the [prior] underlying agreements” and “release[d] Defendants from any

1 claims Plaintiff may have against Defendants from the beginning of time until this day [July 17,
2 2022]” in the Stipulation. The Stipulation is attached as **Exhibit L** *supra*.

3 200. The Stipulation also provided that the parties would “execute and deliver promptly
4 any and all such documentation, or documents of any and every kind and character as may be
5 reasonably required, necessary, or proper for the purpose of giving full force and effect to this
6 agreement[.]” The parties further agreed “to cooperate and to do all things necessary to accomplish
7 the intention of this agreement.”

8 201. Despite the Stipulation’s release of claims and the representations made therein,
9 Bridge has asserted and continues to assert the Bridge Statement perfects its subsequently granted
10 security interest against the Debtor.

11 202. Bridge has also refused to release the Bridge Statement pursuant to the terms and
12 conditions of the Stipulation.

13 203. In Count One the Trustee detailed the onerous fees that Bridge charged, the substantial
14 sums that the Debtor paid to Bridge pre-petition, and the business disruptions and increased
15 indebtedness caused by Bridge.

16 204. In Count One, the Trustee has asserted that the Bridge Statement is not valid and
17 cannot perfect the security interest contained in the “Fundura agreement”. In Count Six, the Trustee
18 has asserted that if the Bridge Statement is valid and enforceable, then it is subject to avoidance as a
19 fraudulent transfer pursuant 11 U.S.C. § 548. If either claim is successful, Bridge would be able to
20 assert an unsecured claim against the estate. If the Trustee did not prevail on these claims, Bridge
21 would retain the right to assert a secured claim.

22 205. While 11 U.S.C. § 510(c)(1) authorizes the equitable subordination of a claim for
23 purposes of distribution, § 510(c)(2) authorizes the Court to “order that any lien securing a
24 subordinated claim be transferred to the estate.”

25 206. The pre-petition actions of Bridge detailed herein with respect to the Debtor were
26 unconscionable. Bridge not only misrepresented itself, but also the priority and validity of its security
27 interest with respect to other creditors. Bridge imposed excessive and undisclosed fees and forced
28

1 defaults to impose higher fees and deeper indebtedness. Bridge also obtained substantial payments
2 from the Debtor pursuant to the four agreements that were signed.

3 207. Bridge's actions also caused the Debtor to borrow additional sums of money from
4 other merchant cash advance lenders as evidenced by the numerous UCC-1 Statements filed by
5 various lenders in the spring and summer of 2021.

6 208. At a minimum, the actions of Bridge violated the requirement that parties act in "good
7 faith" in the "performance and enforcement" of transactions governed by the Uniform Commercial
8 Code. N.Y. UCC §1-201(b)(20). In Article 9, "good faith" is specifically defined as "honesty in fact
9 and the observance of reasonable commercial standards of fair dealing." N.Y. UCC §9-102(a)(43).

10 209. Bridge did not act in good faith at all times herein.

11 210. If the Court determines that the Bridge Statement is a valid and enforceable security
12 interest, then the Trustee respectfully requests that the Court order the lien of Bridge to be equitably
13 subordinated given its pre-petition actions such that the lien is transferred to the estate pursuant to 11
14 U.S.C. § 510(c)(2).

15 211. If the Court determines that the Bridge Claim is an unsecured claim because the Bridge
16 Statement does not perfect any security interest granted to Bridge, the Trustee asks that the Court
17 order the Bridge Claim equitably subordinated to the claims of all general unsecured creditors herein
18 pursuant to 11 U.S.C. § 510(c)(1).

19 WHEREFORE, Plaintiff respectfully requests that the Court grant judgment in his favor
20 against the Defendants on the following counts:

21 **On The First, Second, and Third Claims for Relief:**

22 1. Entering a declaratory judgment adjudicating the validity, priority, and enforceability
23 of the Bridge Statement, the Cobalt Statement, and the MNS Statement; (ii) determining the
24 respective amounts of the Bridge Claim, the Azzure Claim, and the MNS Claim and the secured
25 portions thereof (if any) pursuant to 11 U.S.C. § 506(a); and (iii) finding that neither Bridge, Azzure,
26 nor MNS have an ownership interest in client files or in any future accounts receivable therefrom as
27 a matter of law.

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On the Fourth Claim for Relief:

1. Entry of a judgment finding that the execution of the Diverse Agreements and recording of the Diverse Statement were fraudulent conveyances and are avoided and preserved for benefit of the estate pursuant to 11 U.S.C. §§ 548(a)(1)(B), 550, and 551.

On the Fifth Claim for Relief:

1. Entry of a judgment finding the recording of the Preference Statements to be preferential transfers in favor of Proofpositive, DVF Parties, and Venture that are avoided and preserved for the benefit of the estate pursuant to 11 U.S.C. §§ 547(b), 550, and 551.

On the Sixth Claim for Relief:

1. If the Court entered a declaratory judgment in favor of Bridge, Azzure, and/or MNS on Counts One, Two, or Three, the Trustee respectfully requests that the Court enter finding that the execution of the applicable agreement(s) and recording of the applicable Statement(s) were fraudulent conveyances and are avoided and preserved for benefit of the estate pursuant to 11 U.S.C. §§ 548(a)(1)(B), 550, and 551.

On the Seventh Claim for Relief:

1. To the extent not already determined herein, entry of a declaratory judgment adjudicating the nature, extent, and priority of the valid security interests against the Debtor perfected by filings with the California Secretary of State including those valid security interests that are subject to avoidance and preservation for the benefit of the estate; (ii) determining the amount of the Defendants' claims, including the secured and unsecured portions of such claims, pursuant to 11 U.S.C. § 506(a); and (iii) finding that no Defendant has an ownership interest in client files or in any future accounts receivable therefrom as a matter of law.

On the Eighth Claim for Relief:

1. In the event the Court determines that payment of the Bridge Claim is secured by a valid and enforceable security interest against the Debtor, that the Court enter an order equitably subordinating the perfected security interest of Bridge due to its pre-petition conduct such that the lien is transferred to the estate pursuant to 11 U.S.C. § 510(c)(2). Alternatively, if the Court determines that the Bridge Claim is not secured by a valid and enforceable security interest against

1 the Debtor, that the Court enter an order equitably subordinating the Bridge Claim to the claims of
2 other unsecured creditors herein due to its pre-petition conduct pursuant to 11 U.S.C. § 510(c)(1) .

3 **On All Claims for Relief:**

- 4 1. Awarding attorneys' fees as provided by contract or applicable law;
5 2. Awarding costs of suit incurred here; and
6 3. Granting any other and further relief as the Court deems just and proper.

7
8 Dated: January 26, 2024

Respectfully submitted,

9 DINSMORE & SHOHL LLP

10
11 By: /s/ Tyler Powell
12 Tyler Powell [pro hac vice]
Yosina M. Lissebeck

13 Special Counsel to Chapter 11 Trustee
14 Richard A. Marshack

15 In Association With,

16 MARSHACK HAYS WOOD LLP
17 General Counsel for Chapter 11 Trustee
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